

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RAYMOND MILLER)	
Claimant)	
)	
VS.)	
)	
WILLIAMS MACHINE TOOL COMPANY)	
Respondent)	Docket No. 1,023,089
)	
AND)	
)	
HARTFORD UNDERWRITERS)	
INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant requests review of the August 17, 2005, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

The Administrative Law Judge (ALJ) found that claimant failed to prove by a preponderance of credible evidence that his injury arose out of and in the course of his employment with respondent.

Claimant contends the ALJ erred in finding he did not injure himself at work. Claimant claims he truthfully testified about his job duties at respondent and that he suffered a repetitive use injury from lifting pans of parts from a cart about a foot off the floor onto a table. Claimant also states the medical records from Dr. Edward Prostic show that claimant sustained injury from repetitive minor traumas from his job at respondent.

Respondent requests that the decision of the ALJ be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant began working for respondent in August 2004, working in end grinding. He testified he worked ten hours a day and worked five and sometimes six days a week. His job duties included lifting pans of parts from a cart that was about a foot off the floor onto a table. These pans were about 5 inches by 12 inches and would contain up to 360 parts, and a full pan would weigh about 50 pounds. Claimant testified he lifted about four of these pans per day. After the pans were on the table, he would put the parts in the grinder. He stated that some machines vibrated and this would bother his shoulder a little bit.

On Monday, April 18, 2005, claimant reported to his supervisor, Steve Smith, that his shoulder was sore and he needed to go to the hospital. Mr. Smith told him to go, and he went to Freeman Health Systems in Joplin, Missouri. The medical records from the hospital show that claimant reported no known injury but stated that his job requires him to do a lot of heavy lifting. Claimant reported to the hospital that the pain started about a month to six weeks earlier. The hospital gave him a release to be off work two days, which claimant took to his supervisor the next day.

Mr. Smith testified that he was claimant's supervisor at respondent. Mr. Smith stated that employees can ask for help lifting the 50-pound pans from the carts and that only about five percent of the time would an employee have to lift them alone. Mr. Smith also said the individual parts in the pans weigh up to no more than one or two pounds apiece. Mr. Smith testified claimant came to him on April 18, 2005, and said his shoulder had been bothering him a couple of months and that the night before he had been working on his wife's car, which aggravated the shoulder pain. Claimant said he needed to go to the hospital to have it checked out. Mr. Smith allowed him to leave to go to the hospital but did not direct him to go to the hospital. Claimant did not indicate that he had a work-related injury.

Claimant returned to work the next day with a doctor's slip to be off for two days and told Mr. Smith he had tendinitis. Claimant returned to work on Thursday and Friday of that week and then called in sick the next Monday. When claimant came to work the next Tuesday, he was terminated for excessive absences. Claimant had previously been given verbal warnings and at least two written warnings about excessive absences, and respondent had suspended him for three days without pay for excessive absences in March 2005. When claimant was absent on Monday, April 25, 2005, Mr. Smith and respondent's plant manager decided to terminate him. Both Mr. Smith and the plant manager testified that they did not know claimant was going to claim a work-related injury until after he was terminated.

Claimant was examined by Dr. Prostic on June 7, 2005, at the request of his attorney. Dr. Prostic took a history from claimant wherein claimant stated "he was

repetitiously lifting trays of parts to grind them.”¹ In his report, Dr. Prostin diagnosed claimant with tendinitis and commented that claimant had sustained repetitious minor trauma during the course of his employment with respondent.

Claimant claims he has offered sufficient evidence of a work-related injury for preliminary hearing purposes. Respondent argues that lifting a 50-pound pan with assistance four times a day is not sufficient to be considered “repetitive motion” under the Workers Compensation Act. Respondent also claims there is strong evidence that claimant’s shoulder injury did not occur at work.

The medical evidence relating claimant’s injury to his work is obviously based upon the history given by claimant. As noted by the ALJ, claimant’s history of repetitive lifting and frequent heavy lifting at work is not supported by the lay witness testimony of individuals familiar with claimant’s job, including claimant himself. Claimant points primarily to lifting the pans of parts as the offending activity. But by his own admission, he only performed this task about four times a day. That is not a repetitive task. In addition, his supervisor not only disputed that claimant would frequently lift pans weighing 50 pounds, he also pointed out that claimant usually had help or could have asked for help with the lifting. Claimant’s counsel, in his brief, argues that even if lifting the full pans of parts was not repetitive, claimant would also lift the individual parts from the pan to do the grinding and that this was repetitive. Unfortunately, this was not the activity that claimant pointed to as causing his symptoms either to the physicians or during his testimony at the preliminary hearing. The Board agrees with the ALJ that the record, as it currently exists, fails to satisfy claimant’s burden of proof as to the cause of his shoulder condition.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Kenneth J. Hursh dated August 17, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November, 2005.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Heather Nye, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹P.H. Trans., Cl. Ex. 1 at 1.